ORIGINAL

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COA NO. 60139-3-I

SUPREME COURT
STATE OF WASHINGTON

FERID MAŠIĆ,

Petitioner,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner Mašić is an injured worker of limited English proficiency (LEP). His appeal of Department of Labor & Industries (Department) orders to the Board of Industrial Insurance Appeals (Board) to the Superior Court and the Court of Appeals were rejected as untimely.

II. CITATION TO COURT OF APPEALS DECISION

Petitioner seeks review of the decision in ***Mašić v. Department of Labor & Industries***, No. 60139-3-I, filed April 21, 2008. APP. A. Reconsideration was denied May 22, 2008. APP. B.

III. ISSUES PRESENTED FOR REVIEW

1. Does receipt of a Department order without a statement of appeal/reconsideration rights in "black faced" type as required by RCW 51.52.050 start the 60-day appeal period contained in RCW 51.52.060?

2. Does uniform treatment under the Industrial Insurance Act (Act) or considerations of Equal Access to Justice require finding LEP worker appeals timely if filed within 60 days of communication of the substance of English language orders in terms the worker understands?

3. Is an LEP worker entitled to reimbursement of interpreter fee incurred to review and correct his deposition during a Board appeal?

4. If the Department knows a worker is LEP and issues English-only orders, does equity affect the 60-day appeal period in RCW 51.52.060?

5. Is an LEP worker deprived of due process of law or equal protection when the Department sends English-only orders, knowing he cannot read them but sends Spanish-speaking workers orders in Spanish?

6. Can a finding of timely appeal be reversed based merely on impeachment of the worker on a collateral matter when the record contains no affirmative proof of 1) when the order was actually received by him or 2) the Department's mailing practices?

IV. STATEMENT OF THE CASE

Ferid Mašić was born in Yugoslavia and came to the United States in 1999 speaking only Bosnian. TR 10/25 11-12.[1] Despite learning some English words for his job in a property maintenance class, he remains fluent only in Bosnian and LEP. TR 10/25 13-14. In 2003, while working one of his two jobs, he suffered serious on the job injuries. From this, he suffered Post Traumatic Stress Disorder. Ex. 1, CBRA 2052-61.

Using an interpreter, Mr. Mašić provided the Department more information supporting his claim, indicating his "non-fluency in English" and saying it should communicate with him via an interpreter. APP. C, EX 2, TR 10/25 24-25, 29-30. The Department order rejected his claim in an English-only order. APP. D, CBRA 80, EX.3. Again using language help, Mr. Mašić provided more data why his claim should be accepted.

APP. E, Ex. 4, TR 10/25 29-31. The Department issued a second English-only affirming that contained neither any "black face type" nor a statement of his right to request reconsideration. APP. F, CBRA 81, Ex. 5.

Mr. Mašić's receipt of this second order on October 9, 2004 was delayed by misdelivery to another apartment. TR 10/25 31-34. Mr. Mašić appealed within 60 days of receiving the order. TR 10/25 36. His appeal stated his LEP status; requested claim acceptance, interpreter services on his claim and during appeal; and other Act benefits. He asked for free interpreter services to communicate with counsel to prepare for and at hearing and reimbursement for his interpreter fees. CBRA 75-81.

The Industrial Appeals Judge (IAJ) failed to order interpreter services throughout the proceedings or for deposition correction. CBRA 139-40. This required Mr. Mašić to incur interpreter services of $480 to correct his deposition. CBRA 1218. No interpretation was provided for attorney-client communication at hearing, preventing them entirely.

An ESL instructor, not knowing the extent of Mr. Mašić's English proficiency, testified the orders would be "confusing" to an LEP person who would need help to understand them. RP 10/25 87, 90-92, 96, 98-99.

No admitted evidence contradicts Mr. Mašić's testimony on when he received the order. No evidence showed that anyone communicated to

[1] References to transcripts of Board proceedings appear as TR with date and page number

him the substance of the second order to him earlier. No evidence showed when the order was mailed or the Department mailing procedures.

Mr. Mašić reported interpreter errors at his deposition, asking the IAJ to appoint a qualified interpreter for hearings. CBRA 882-900, APP. G. The IAJ appointed the same interpreter for the hearings. Additional interpretation problems arose and were pointed out. TR 10/25 10-13, 30; TR 11/9 7-8, 16-18, 20-23,[2] 214, 218-219, 221, 223-225.

After the jurisdictional hearing, the IAJ found Mr. Mašić had appealed timely. TR 11/18 26. A motion to show cause offered declarations to impeach Mr. Mašić on a collateral matter -- his testimony on cross-examination that he received a call informing him his mother died.[3] The IAJ set and then cancelled a show cause hearing.[4] Without holding any evidentiary hearing to allow Mr. Mašić to present evidence to resolve the impeachment issue raised,[5] the IAJ changed his opinion of Mr. Mašić's credibility and the finding of timelines. CBRA 82. Both IAJ and Board rejected the appeal as untimely. The Superior Court and the Court of Appeals affirmed.

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and to the Certified Board Record on Appeal as CBRA with page number.

[2] *E.g.* The interpreter explains for the first time there is no word for "claim" in Bosnian.

[3] TR 11/9 224-5. Mr. Mašić filed multiple declarations explaining he received a phone call telling him his mother was dying that day and that because of the bad connection he thought his mother had died and since then refers to that as when his mother died. CBRA 1403-1415, 1445-1449,1549-1601

[4] CBRA. 1542, 1945-1947.

V. ARGUMENT

A. THE 60-DAY APPEAL PERIODS DID NOT EXPIRE AS THE DEPARTMENT ORDERS LACKED THE APPEAL/RECONSIDERATION NOTIFICATION IN "BLACK FACED" TYPE REQUIRED BY RCW 51.52.050.

RCW 51.52.050 requires Department orders to state appeal and reconsideration rights language in "black faced" type. RCW 51.52.060 starts a 60-day appeal period on order "communication." APP. H.[6]

Division I disregarded the orders' defective form, effectively rewriting RCW 51.52.050. Courts may not do this, but must "give effect to every part of a statute, whenever possible, and should not deem a clause superfluous unless it is the result of an obvious drafting error." ***Dennis v. Dep't of Labor & Industries***, 109 Wn.2d 467, 479, 745 P.2d 1295 (1987).

Giving effect to every part of RCW 51.52.050 and RCW 51.52.060 leads to only one conclusion -- that Mr. Mašić was not given proper notice of his right to request reconsideration and the time period for appeal, thus his appeal period never began. Also because the appeal period starts only upon order "communication," Mr. Mašić's appeal was timely.

B. LACK OF UNIFORM TREATMENT VIOLATES THE ACT.

This State has an interest in ensuring uniform treatment to injured workers to promote the Act's beneficial aim to minimize the economic

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[5] In addition to responding to the motion, Mašić requested the opportunity to present testimony from witnesses in Bosnia at the show cause hearing. CBRA 1615-1619.

[6] APP. H. contains the full language of RCW 51.52.050 and RCW 51.52.060.

losses incurred due to industrial injury. RCW 51.12.010. Numerous Act provisions require treatment of workers without discrimination.[7] Uniformity on timeliness decisions is important to ensure all workers get an adequate opportunity to receive benefits under the Act.

In ***Ferenćak v. Dep't of Labor & Industries***, 142 Wn.App. 713, 175 P.3d 1109 (2008), the Board found timely an appeal filed over 6 months after order receipt, because it was filed within 60 days "after an interpreter communicated to Mr. Ferenćak the significance of the Department order." ***Ferenćak*** CBRA 77-78, APP. I. Mr. Mašić appealed within 60 days of order receipt and of learning of its significance within 3 months of order issuance, but his appeal was rejected as untimely. Applying the ***Ferenćak*** timeliness test, Mr. Mašić's appeal should be found timely and remanded for hearing on the merits of his appeal.

C. PETITIONER WAS PREJUDICED BY THE BOARD'S FAILURE TO PROVIDE FULL INTERPRETER SERVICES AND IS ENTITLED TO REIMBURSEMENT FOR INTERPRETER EXPENSES INCURRED DURING BOARD APPEAL.

Citing RCW 2.43.030 and the Board's own regulations,[8] the Court of Appeals correctly held in ***Kustura v. Dep't of Labor & Industries***, 142 Wn.App. 655, 175 P.3d 1117 (2008), that once the Board elects to provide

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[7] RCW 51.04.030(1), requires medical benefits payment "without discrimination or favoritism" "with as great uniformity as . . . diverse . . . circumstances . . . will permit." RCW 51.32.030, 51.32.060, 51.32.090, 51.16.040, 51.32.180, 51.14.010, and RCW 51.14.080 also require equal treatment of workers. See also RCW 51.32.055.

[8] WAC 263-12-097(1) and 263-12-097(4).

interpreter services at its expense, it "may not prevent the interpreter from translating whenever necessary to assist the claimant during the hearing." The Court of Appeals further held:

> But by not providing an interpreter . . . for communications with counsel during . . . hearings, the Board failed to comply with the statute's directive or its own regulations which required it to provide an interpreter to assist the workers "throughout the proceedings."

Mr. Mašić incurred a $480 interpreter fee to correct his deposition. CBRA 1218. That expense would not have occurred had interpreter serves been provided at no expense for this purpose. Had he not been injured while working, he would never have incurred this expense.

Despite this, the Court of Appeals ruled he had not been prejudiced and was, therefore, not entitled to reimbursement. This ruling should be reviewed because 1) ordinarily it is deemed "prejudicial" to cause a party to incur unnecessary expenses; *vide e.g.* ***Steele v. Lundgren***, 85 Wn.App. 845, 859, 935 P.2d 671 (1997) and 2) it is inconsistent with public policy to impose expenses on LEP workers when English-fluent workers incur no such expenses. This ruling allows the Board with impunity to refuse to provide required interpreters and to shift those expenses to those least able to afford them -- LEP workers like Mr. Mašić whose language impairment the Department failed to accommodation when rejecting his claims for benefits for his on the job injuries.

D. THE DEPARTMENT IS REQUIRED BY STATUTE TO PROVIDE FREE INTERPRETERS FOR LEP INJURED WORKERS.

Interpreter services are but one of the benefits provided under the Act to minimize the economic loss of industrial injury. RCW 51.12.010.[9] Under RCW 2.43.010, every LEP party to a legal proceeding is entitled to an interpreter. A legal proceeding is defined as a "proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof." RCW 2.43.020. Under RCW 2.43.040, agencies initiating proceedings bear the interpreter cost.

The Court of Appeals followed ***Kustura***, where it applied the "last antecedent rule" and held a Department procedure resulting in an order determining claim benefits was not a "hearing" and, therefore, not a "legal" proceeding. In so doing, the Court of Appeals disregarded this Court's recent interpretation of the "last antecedent" rule in ***Berrocal v. Fernandez***, 155 Wn.2d 585, 593, 121 P.3rd 82 (2005):

> But the rule further provides that 'the presence of a comma before the qualifying phrase is evidence the qualifier is intended to apply to *all antecedents* instead of only the immediately preceding one.'

The qualifier in RCW 2.43.010 is preceded by a comma, indicating the last phrase is intended to apply to all antecedents, not merely the

[9] Department Policy requires interpreter services be provided for LEP worker's medical treatment to avoid discrimination forbidden by Title VI of the Civil Rights Act.

immediately preceding antecedent, which refers to "hearings." Had the Court of Appeals applied the last antecedent rule consistent with this Court's instruction in ***Berrocal,*** it would have determined that a legal proceeding includes a proceeding by which an administrative board or agency of the state determine rights by issuing orders thereon. The practical effect of the Court of Appeals ruling is to require injured LEP workers to hire their own interpreters, both diminishing their chances of claim acceptance and benefits received under the Act because otherwise they will be unable to communicate effectively with the Department or its agents (*e.g.* physicians conducting IMEs) to assure that all pertinent facts are before the agency before it issues an order rejecting claim benefits.

The Department argues that the worker, not the agency, initiates the proceedings by asserting a claim. The truth is otherwise. By statute, employers must report all on-the-job injuries, following which the Department is required to investigate by RCW 51.04.020. To start its investigation, the Department provides a form requiring the worker to describe the incident and injuries under penalty of perjury. [10] From the worker's standpoint, the Department initiates the governmental action.

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[10] The Department serves as a law enforcement agency. For example, it may use the information from an injury investigation not only to accept a claim or pay time loss benefits, if any, but also to report on fraud as required under RCW 43.22.331, issue WSHA citations under RCW 49.17.130, *etc.* *Vide infra* § E, fn. 12, p. 10.

Liberally interpreting the Act in Mr. Mašić's favor,[11] the Court should find that the Department initiated the proceeding.

E. FREE INTERPRETER SERVICES ARE REQUIRED FOR DEPARTMENT INJURY INVESTIGATION AND CLAIM HANDLING.

As a matter of equal protection, the right to a free interpreter for LEP persons under Title RCW 2.43 is the same as for the hearing impaired under RCW 2.42. ***State v. Marintorres***, 93 Wn.App. 442, 969 P.2d 501 (1999). RCW 2.42.120(4) requires free interpreters be provided in any law enforcement investigation. RCW 51.04.020 (6) requires the Department to investigate every serious on-the- job injury. In performing these investigations and exercising other statutorily assigned powers, the Department acted as a law enforcement agency in claims handling and investigation.[12] Mr. Mašić was entitled to an interpreter when required to provide testimonial statements, just as LEP witnesses and victims are

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[11] RCW 51.12.010, As noted in ***Cockle v. Dep't of Labor & Industries,*** 142 Wn.2d 801, 811, 16 P.3d 583 (2001); "[T]he guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker."

[12] The Department uses information from an injury investigation to: report on fraud as required under RCW 43.22.331; issue WSHA citations under RCW 49.17.130; charge WISHA violations under RCW 49.17.180 or RCW 49.17.190; act on claims filed under RCW 51.28.030; charge false reporting under RCW 51.48.020; charge retaliation under RCW 51.48.025; penalize violation under RCW 51.48.080; penalize self-insured employers under RCW 51.48.017; penalize failure to cover workers under RCW 51.48.105; penalize workers under RCW 51.48.250 and RCW 51.48.260; order worker to reimburse money and pay interest under RCW 51.48.250 & .260; or refer workers for criminal prosecution under RCW 51.48.270, RCW 9A.56, and/or RCW 9A.72.

entitled to interpreters when other agencies take sworn statements in investigations.[13]

By applying RCW 2.43 more restrictively based on its ***Kustura*** decision, the Division I decision here conflicts with Division III's equal protection analysis in ***Marintorres***. Therefore, this Court should accept review and o reconcile this conflict between Divisions I and III.

F. THE HEARINGS INTERPRETER APPOINTED WAS NOT "QUALIFIED" TO INTERPRET *FOR MR. MAŠIĆ.*

RCW 2.43.010 states the legislative purpose of Title 2.43 RCW to provide for the use and appointment of "qualified interpreters" to secure the rights of LEP persons in "legal proceedings." RCW 2.43.020(2) defines a "qualified interpreter" as:

> a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

The interpreter appointed by the Board failed this standard and previously showed serious problems in interpreting for Mr. Mašić's deposition, requiring 12 pages of corrections. Mr. Mašić pointed this out by two separate letters to the IAJ on the selection of a qualified interpreter for hearing. CBRA 882-900, 1205-1218, APP. G. At both

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[13] Statements under oath to government agencies are "testimonial" and are part of a legal proceeding. ***State v. Smith***, 97 Wn.2d 856, 651 P.2d 207 (1982) and ***Davis v. Washington***, 547 U.S. 813, 165 L.Ed.2d 224, 126 S.Ct. 2266 (2006).

hearings, additional interpreter difficulties appeared. This interpreter problem and the inability to communicate with counsel contributed to the IAJ's, Board's and Court of Appeals' finding Mr. Mašić's appeal untimely as the decision was resolved on impeachment of his cross-examination testimony on the call about his mother's death. See Mr. and Mrs. Mašić's, and declarations from Bosnia with translations on that call, showing serious defects in declarations supporting the motion to show cause. CBRA 1549-55, 1598-1601, 1881- 1914, 1930-43.

G. LEP Workers Receiving English-Only Orders Are Entitled to Equitable Relief from the 60-Day Board Appeal Period.

In ***Rodriguez v. Dep't of Labor & Industries***, 85 Wn.2d 949, 540 P.2d 1359 (1975), a Spanish-fluent LEP worker appealed a Department order more than 60 days after issuance. The Court stated the issues at 952:

> (1) [W]hether appellant's notice of appeal was filed within the time limits prescribed in RCW 51.52.060 and, (2) if not, whether appellant's extreme illiteracy excused the untimely filing.

The Court held that equity required waiver of the strict application of the law in light of the worker's illiteracy. The Court noted the Department knew or should have known of the worker's illiteracy and would not be substantially prejudiced by allowing the appeal, saying at 955:

> A report of the accidental injuries was made . . . in a timely fashion, a full investigation thereof was conducted by the department, the claim was allowed and payments made thereon. No substantial prejudice will result to the department or the board

> from allowing appellant workman's appeal from the order closing his claim. Further, it is clear appellant was extremely illiterate and himself unable to ascertain or understand the nature and contents of the order communicated and the department knew or should have known of appellant's illiteracy at the time it closed his claim.

Mr. Mašić is also effectively illiterate in English. The Board recognized this by having the interpreter to read English language exhibits to him during his testimony at hearing. Further, as in ***Rodriguez***, there is no prejudice to the Department in allowing this appeal.

The Court of Appeals found illiteracy insufficient to apply equity, imposing additional requirements, effectively modifying ***Rodriguez***.

H. ENGLISH-ONLY ORDERS DEPRIVE LEP WORKERS OF DUE PROCESS.

Mr. Mašić's potential rights under the Act triggered due process. ***Buffelen Woodworking v. Cook***, 28 Wn.App. 501, 625 P.2d 703 (1981). Fundamental to due process is adequate notice and the right to be heard. ***Sherman v. Washington***, 128 Wn.2d 164, 184, 905 P.2d 355 (1995).

To be meaningful, notice must (1) apprise a party of rights and (2) provide an opportunity to meet the opposing party's claims and the time to prepare and respond. ***Cuddy v. Dep't of Public Assistance***, 74 Wn.2d 17, 442 P.2d 617 (1968). "Unique information about the intended recipient" determines whether a notice is adequate or not. ***Jones v. Flowers***, 547 U.S. 220, 126 S.Ct. 1708, 1716 (2006). The ***Jones*** Court stated at 1715:

> [W]hen notice is a person's due . . .[t]he means employed must be such as one desirous of actually informing the [intended recipient] might reasonably adopt to accomplish it.

The order was in English which the Department knew Mr. Mašić could not understand. The Arizona Supreme Court observed that using English to communicate with the LEP "effectively bars communication itself." ***Ruiz v. Hull***, 191 Ariz. 441, 957 P.2d 984 (1998).[14]

I. ENGLISH-ONLY ORDERS DEPRIVE LEP WORKERS OF EQUAL PROTECTION OF THE LAW.

The Department's policy is to furnish orders only in English to all injured LEP workers, except those who fluent in Spanish. This policy places non-Spanish speaking LEP workers – including those fluent only in Bosnian -- at a disadvantage. Although LEP workers' native tongue is necessarily linked to their national origin, the Court of Appeals in ***Kustura***, *supra*, ruled the Department's policy neither created a suspect classification based on national origin nor reflected purposeful discrimination against any identifiable group. Hence, the Court of Appeals reasoned the Department policy was not subject to strict scrutiny, but only need satisfy the "rational relation" or "rational basis" test.[15]

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[14] Because the Department knew the English-only orders could not be read by the worker in this case, arguably the orders were never communicated to him as required by both RCW 51.52.050 & RCW 51.52.060. If the orders were not "communicated", the 60-day appeal period did not start until the significance of the orders were conveyed in terms the worker understands, as the Board found in ***Ferenćak***, *supra.*

[15] ***Macias v. Dep't of Labor & Industries***, 100 Wn.2d 263, 668 P.2d 1278 (1983).

In so ruling, the Court of Appeals overlooked authority to the effect that treatment based on a person's LEP status constitutes discrimination based on national origin.[16] For example, this Court has ruled that adverse employment action because of a person's "foreign" accent may constitute discrimination based on national origin.[17]

Further, Executive Order 13166, signed in 2000, states that federally assisted programs are required to "ensure that the programs and activities they normally provide in English are accessible to LEP persons ***and thus do not discriminate on the basis of national origin*** in violation of Title VI of the Civil Rights Act of 1964...." (Emphasis added). Title VII of the Civil Rights Act of 1964 bars such discrimination in employment and employment benefits like Washington's Industrial Insurance Program which has received substantial federal assistance from the US Department of Labor for years, subjecting it to Executive Order 13166. See APP. J.[18]

The Department's policy to send orders to non-Spanish LEP fluent workers in a language they cannot understand creates a suspect class based

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[16] National origin is a suspect classification. ***Andersen v. King County***, 158 Wn.2d 1, 138 P.3d 963 (2006). See also ***Marintorres***, *supra.*

[17] ***Xieng v. Peoples Nat'l Bank***, 120 Wn.2d 512, 844 P.2d 389 (1993) ("Accent and national origin are obviously inextricably intertwined in many cases.")

[18] APP. J shows the amount of federal assistance received by Washington's Industrial Insurance program funds in the state biennial budgets in years 1997-2007.

on national origin. Classifications disadvantaging a suspect class are "presumptively invidious" under ***Macias***, *supra*, and require the State "to demonstrate that its classification has been precisely tailored to serve a compelling governmental interest."[19] There is no suggestion the policy is precisely tailored or serves any "compelling governmental interest."

Nor does Department policy meet the "rational basis" test. This Court set forth the elements of this test in ***Willoughby v. Dep't of Labor & Industries***, 147 Wn.2d 725, 57 P.3d 611 (2002), stating at 739:

> Rational basis tests whether (1) all members of the class created within the statute are treated alike, (2) reasonable grounds exist to justify the exclusion of parties who are not within the class, and (3) the classification created by the statute bears a rational relationship to the legitimate purpose of the statute.

The Department's policy fails at least two of these three parts. First, the class of workers covered by the policy are LEP workers, yet not all members of the class are treated alike. Spanish-fluent LEP workers are sent orders in their language, while other LEP workers are not.

Second, the Department's rationale for its discriminatory policy -- to avoid added costs -- has already been found insufficient by this Court.[20] The ***Willoughby*** Court expressly rejected "cost saving arguments" when

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[19] Citing ***Plyler v. Doe***, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982).

[20] The Department's claim of added cost is devoid of any actual or estimated cost figures or by any other documented proof -- not surprising in light of the fact that once the basic forms are translated, the cost of providing orders and notices in Bosnian (or virtually any other language) would be miniscule.

evaluating whether a statute satisfied the rational basis test, holding that "preservation of state funds is not in itself a sufficient ground to defeat an equal protection challenge." ***Willoughby,*** 743. This Court rejected a similar argument in ***Cockle,*** *supra.* The Court of Appeals declined to follow these cases, instead finding the cost-savings rationale persuasive.

J. EQUAL ACCESS TO JUSTICE REQUIRES LANGUAGE ACCOMMODATION BY PROVIDING INTERPRETERS TO LEP WORKERS AND FINDING MR. MAŠIĆ'S APPEAL TIMELY.

Equal Access to Justice means that all Washington residents should receive equal access to the judicial system, government benefits, and fair government treatment for all. Report of the Task Force on Civil Justice Funding, ***Washington Civil Legal Needs Study***, (2003).

Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts[21] states on pages 1 and 3:

> When justice is inaccessible, the simple result is injustice. The need to eliminate barriers preventing access to our courts is real and immediate.
>
> Access to the courts is a fundamental right, preservative of all other rights" and later that "the law requires courts to remove barriers and/or provide reasonable accommodations. What constitutes reasonable accommodation depends upon the particular circumstances.[22]

On page 13, this report notes that administrative agencies must also provide accommodations to ensure equal access to justice.

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[21] Washington State Bar Association, available on line at www.wsba.org/atj.

The July 2007 ***Washington State LEP Plan***, published by the Office of the Administrator of the Courts, states at pages 5-6:

> Federal and Washington law require that LEP persons be provided with competent interpreters in all court proceedings.
>
> Washington's interpreter statute [RCW 2.43] provides that the court, governmental body or agency initiating the proceeding is to pay for the interpreter in all legal proceedings in which the LEP individual is compelled to appear by the court, governmental body or agency.

GR 33 accommodates language-related disabilities by use of "qualified interpreters" to make court services and programs available.[23] Eligible persons are defined by GR 33(a) (4) as any person covered by RCW 49.60 or any similar local state or federal laws. Washington's Law against Discrimination, RCW 49.60, forbids discrimination base on national origin as does the Civil Rights Act of 1964. Stressing the import of accommodating disabilities, the comment to GR 33 says:

> Access to justice for all persons is a fundamental right. It is the policy of the courts of this state to assure that persons with disabilities have equal and meaningful access to the judicial system. Nothing in this rule shall be construed to limit or invalidate the remedies, rights, and procedures accorded to any person with a disability under local, state, or federal law.

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[22] This language is incorporated in the comment to GR 33 on required accommodations. *Vide infra.*

[23] GR 33 applies to courts at all levels and to those administrative agencies, like the Board of Industrial Insurance Appeals, which adopt the rules applicable in Superior Court to civil cases as their procedural rules. WAC 263-12-125.

The Department's and Board's failure to provide free interpreters effectively impaired Mr. Mašić's access to justice, resulting in his receive no benefits guaranteed by the Act for his industrial injury.

K. IMPEACHMENT ON COLLATERAL MATTERS IS NOT ALLOWED.

The IAJ reversed his decision finding Mr. Mašić's appeal timely based solely on impeachment on a collateral matter – whether his mother had died.[24] CBRA 61. Extrinsic evidence cannot be used to impeach a witness on a collateral issue. ***State v. Carlson***, 61 Wn.App. 865, 812 P.2d 536 (1991), rev. denied, 120 Wn.2d 1022, 844 P.2d 1017 (1993). At 876, the Court explained: "This rule applies even when, as here, the extrinsic evidence may have some indirect bearing on motive, bias or prejudice." This Court held in ***State v. Oswalt***, 62 Wn.2d 118, 121, 381 P.2d 617 (1963) that "Contradicting or impeaching testimony is collateral if it could not be shown in evidence for any purpose independent of contradiction."

Because Mr. Mašić's mother's death was only admissible to impeach his testimony and for no other purpose independent of contradicting him, it was forbidden impeachment on a collateral matter. Therefore, dismissal of Mr. Mašić's appeal as untimely was erroneous.

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[24] The IAJ stated in the Decision & Order adopted by the Board that he "placed a great deal of emphasis on the fact that the claimant testified he specifically recalled the date he received the order because it was the same day he learned that his mother died."

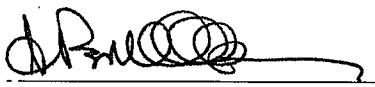
VI. ATTORNEY FEES & COSTS

Petitioner requests attorney fees and costs pursuant to RCW 51.52.130 as construed in ***Brand v. Dep't of Labor & Industries***, 139 Wn.2d 659, 989 P.2nd 1111 (1999) where the court ruled that prevailing on any issue entitles the worker to attorney fees on all issues. He also requests an award of his interpreter fees under RCW 2.43.040(4).

VII. CONCLUSION

Review should be granted because the Court of Appeals' decision conflicts with decisions of this Court, because of the conflict between Division I and Division III, because this case presents issues of substantial public interest this Court should determine. The Court is respectfully requested to reverse the Court of Appeals on all issues, to remand for further Board proceedings consistent with this Court's opinion, and to award attorney's fees, costs, and interpreter costs.

DATED this 20th day of June 2008.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FERID MAŠIĆ, Appellant, v. DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	)	DIVISION ONE No. 60139-3-I UNPUBLISHED OPINION FILED: April 21, 2008

PER CURIAM — Ferid Mašić, an injured worker with limited English proficiency (LEP), appeals a superior court order affirming the Board of Industrial Insurance Appeals (Board) order dismissing his appeal of the Department of Labor and Industries (Department) denial of his claim for workers' compensation benefits. The Board dismissed Mašić's appeal on the basis that it was not timely filed and that he was not entitled to equitable relief from the applicable time limitations. The superior court further ruled that neither the Department nor the Board violated any of Mašić's statutory, due process, or equal protection rights under the United States or Washington State constitutions regarding the provision of interpreter services. Ferenćak v. Dep't of Labor & Indus., 142 Wn. App. 713, 175 P.3d 1109 (2008), Mestrovac v. Dep't of Labor & Indus., 142 Wn. App. 693, 176 P.3d 536 (2008), and Kustura v. Dep't of Labor & Indus., 142 Wn. App. 655, 175 P.3d 1117 (2008), are dispositive on the majority of the issues

raised by Mašić. The remaining errors claimed are supported by neither the facts nor the law. Further, the facts in Mašić's claim do not warrant the application of equitable relief for his failure to timely file his appeal. Accordingly, we affirm.

I

Mašić is a Bosnian immigrant. On June 19, 2003, he injured his arm and leg while using a power tool during the course of his employment with Seattle Concrete Design (SCD). Mašić filed a claim for workers' compensation benefits with the Department, which denied his claim on the basis that it was unable to substantiate an employer-employee relationship at the time of the alleged injury. Mašić filed a protest of that order on May 8, 2004. He also advised the Department in his protest letter that he was utilizing the services of a Bosnian interpreter, and that he was not fluent in English. On September 28, 2004, the Department mailed to Mašić an order affirming its denial of his claim.

Mašić retained counsel, and his counsel's notice of representation was filed with the Department on October 28, 2004. Through his attorney, Mašić appealed the order to the Board on December 6, 2004—more than 60 days following its issuance. Mašić alleged that chapter 2.42 RCW, chapter 2.43 RCW, and due process entitled him to free interpreter services for all necessary communications relating to his request for benefits and dealings with the Department. Mašić also argued that the same authority required the Board to provide him with an interpreter for all hearings, as well as all communications with his attorney outside of legal proceedings in preparation for hearings, and in response to discovery requests and motions. The Industrial Appeals Judge (IAJ)

granted Mašić's request for interpreter services at hearings, but not for conferring with counsel during the proceeding, or for hearing preparation and response to motions and discovery requests. The IAJ issued a proposed decision and order holding that the notice of appeal was not timely filed and, as such, the Board did not have jurisdiction over the subject matter of the appeal. The IAJ did not specifically address the issue of interpreter services raised by Mašić in his appeal, as the finding as to the untimeliness of the appeal was dispositive. Mašić filed a petition for review to the three-member Board, which was denied.

Mašić subsequently appealed the Board order to the King County Superior Court. Mašić reiterated his prior arguments that he was entitled to interpreter services provided by the Department for all necessary communications relating to his receipt of benefits before the Department. In addition, he argued that Executive Order 13,166 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2004), further supported the right to free interpreter services. Mašić argued that the same authority had required the Board to provide him with an interpreter for all hearings, as well as all communications with his attorney outside of any legal proceeding in preparation for hearings and in response to discovery requests and motions. The superior court affirmed the conclusions of law of the Board's decision and order, and further ruled that neither the Department nor the Board violated any of Mašić's statutory, due process, or equal protection rights. Lastly, the court held that Mašić was not entitled to equitable relief from the requirements of RCW 51.52.060(1) that an appeal be

filed within 60 days of the date the order is communicated to the worker, and awarded attorney fees to the Department. Mašić appeals.

II

On appeal, the Board's decision is viewed as being prima facie correct and the burden of proof is on the party challenging that decision. RCW 51.52.115; Ruse v. Dep't of Labor & Indus., 138 Wn.2d 1, 5, 977 P.2d 570 (1999). The superior court reviews decisions of the Board de novo, but "cannot consider matters outside the record or presented for the first time on appeal." Sepich v. Dep't of Labor & Indus., 75 Wn.2d 312, 316, 450 P.2d 940 (1969). We review the findings of the superior court's decision de novo to determine whether "substantial evidence" supports them, and whether its "'conclusions of law flow from the findings.'" Ruse, 138 Wn.2d at 5 (quoting Young v. Dep't of Labor & Indus., 81 Wn. App. 123, 128, 913 P.2d 402 (1996)). Substantial evidence is "evidence sufficient to persuade a fair-minded, rational person of the truth of the matter." R&G Probst v. Dep't of Labor & Indus., 121 Wn. App. 288, 293, 88 P.3d 413 (2004).

Mašić alleges that the IAJ's decision to provide him with interpreter services only during the proceeding before the Board, and not for communications with counsel outside of the hearing, violated chapter 2.43 RCW, constitutional due process, and equal protection. He further alleges that he is entitled to interpreter services in his native language as well as communication of Department orders or interpretation thereof in his native language. We addressed these issues in Kustura, Mestrovac and Ferenćak, holding that

"neither chapter 2.43 RCW nor constitutional due process or equal protection considerations entitle nonindigent LEP injured workers to free interpreter services for communications with counsel outside of legal proceedings for which an interpreter has already been appointed during an appeal." Ferenćak, 142 Wn. App at 728 (citing Kustura, 142 Wn. App. at 679-83, 686-89). Accord Mestrovac, 142 Wn. App. at 707-08. Thus, we find no error in the IAJ's decision concerning Mašić's identical claims for interpreter services outside of the proceeding. Further, Department action and claim administration are not "legal proceedings" for which interpreter services are authorized pursuant to RCW 2.43.030. Kustura, 142 Wn. App. at 679. The remaining issues, therefore, are whether, based on the facts in Mâsić's case, he is entitled to equitable relief from the time bar on his appeal, whether due process requirements were met, and whether the additional authority cited by Mašić requires the Department and the Board to provide free interpreter services.

III

A Department order or judgment based on findings of fact becomes a complete and final adjudication binding upon both the claimant and the Department unless it is set aside on appeal or vacated. Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 538, 886 P.2d 189 (1994). "The failure to appeal an order, even one containing a clear error of law, turns the order into a final adjudication, precluding any reargument of the same claim." Marley, 125 Wn.2d at 538. A person aggrieved by a Department order must file a notice of appeal to

the Board "within sixty days from the day on which a copy of the order, decision, or award was communicated to such person." RCW 51.52.060(1).

Mašić contends that the order affirming the denial of his claim was not "communicated" to him within the meaning of RCW 51.52.060(1) because it was written in English, rather than in his native language of Bosnian. The Washington Supreme Court has held that "communicated" as used in this statute requires only that the worker received the order, not that he or she understood it. Rodriguez v. Dep't of Labor & Indus., 85 Wn.2d 949, 952-53, 540 P.2d 1359 (1975). Mašić contends that the court's decision of this issue in Rodriguez is dicta, and that, because of equitable concerns, the court's decision to equate delivery with communication should not apply to cases in which there is a language barrier. But Mašić misstates the court's holding. The court's evaluation of whether there was communication of a Department order is distinct, and precursory, to its analysis of whether equitable relief should be granted to excuse a claimant from the statutory time bar once the court has found that the order was communicated. The granting of equitable relief does not equate to a determination that there was a lack of communication; rather, it relieves a claimant from the time limit for filing an appeal which begins to run *after* communication of the order is accomplished.

In this case, the record reveals that the Department mailed the order on September 28, 2004, and that Mašić filed his appeal on December 6, 2004. Once mailing of an item is established, a presumption of receipt by the person to whom it is addressed is created. Scheeler v. Empl. Sec. Dep't, 122 Wn. App.

484, 489, 93 P.3d 965 (2004). Mašić attempted to rebut the presumption of receipt with testimony that, due to an error in mailing, he did not receive the order until October 9, 2004. The IAJ initially held that the appeal was timely, but on the basis of additional evidence, found Mašić's testimony lacking veracity and ultimately reversed the decision set forth in the interlocutory order. Mašić contends that the IAJ's reversal of the interlocutory decision on jurisdiction was improperly premised upon impeachment on a collateral matter. This argument is unconvincing. Pursuant to RCW 51.52.102, the Board may continue hearings on its own motion to secure additional evidence that, in its opinion, is deemed necessary to decide the appeal fairly and equitably. If such evidence is admitted, all parties are to be given a full opportunity for cross-examination and to present rebuttal evidence. RCW 51.52.102.

Mašić assigned error in his appeal to the Board order and to all of the Board's rulings, thus encompassing the IAJ's determination that the opportunity for rebuttal to the declarations was sufficient. Mašić did not, however, present any argument in his opening brief that his opportunity for rebuttal or cross-examination of the declarants was insufficient, and thus any error in that regard is waived. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Moreover, Mašić was given a full opportunity to, and did, submit equivalent rebuttal evidence and argument concerning the evidence. As such, the IAJ did not err in exercising his discretion pursuant to RCW 51.52.102 and

WAC 263-12-120[1] in securing or admitting the additional evidence, or in allowing such rebuttal evidence and cross-examination of witnesses as was deemed appropriate in his discretion.[2]

Mašić next contends that even if we find he failed to comply with the 60-day appeal time limit, he should be granted equitable relief from strict compliance with the appeal time bar. Such relief has been granted where the claimant is incompetent or illiterate. See Rodriguez, 85 Wn. 2d at 955. We recognize that such relief may not be limited only to those cases involving incompetent or illiterate claimants. Kustura, 142 Wn. App. at 673 (citing Fields Co. v. Dep't of Labor & Indus., 112 Wn. App. 450, 459, 45 P.3d 1121 (2002)). But "[e]quity aids the vigilant, not those who slumber on their rights." Leschner v. Dep't of Labor & Indus., 27 Wn.2d 911, 927, 185 P.2d 113 (1947). Thus, when the claimant fails to act diligently in pursuing the claim, we will not grant equitable relief. Kustura, 142 Wn. App. at 672 (citing Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162,

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[1] WAC 263-12-120 provides that an IAJ may, when all parties have rested, receive and present additional evidence as deemed necessary to decide the appeal fairly and equitably. Any such evidence is received subject to "full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the industrial appeals judge, the party shall make application immediately following the conclusion of such evidence." WAC 263-12-120.

[2] Mašić additionally contends that the interpreter services provided at the Board were inadequate, and that poor translation resulted in the IAJ being informed that Mašić said his mother had "died" on October 9, 2004, when, in fact, he indicated that she was "dying." The IAJ rejected this contention, noting that the additional evidence he received indicated Mašić's mother had only been ill, and that her illness did not occur during the time period in question. More importantly, the IAJ specifically asked Mašić's counsel whether she had any objection to the use of the interpreter at the hearing, and she indicated that she had no further comment beyond her previously filed pleadings. The IAJ's questioning of counsel was a clear attempt to induce counsel to raise any further issues in need of resolution. By declining to raise the issue when questioned by the IAJ, any argument on appeal from the IAJ's ruling was waived. Moreover, Mašić did not actually argue the issue in his petition for review, and did not raise it in his appeal to the superior court. Because no objection was made at the Board, or raised in the petition for review, the issue of adequacy of the interpreter services was waived on this basis also.

176-77, 937 P.2d 565 (1997)).

Here, Mašić was available, mentally competent, and literate at the time he received the Department order. The preponderance of evidence before the IAJ did not support a finding that there were extraordinary circumstances preventing Mašić from receiving the order, or filing a timely appeal. Mašić had demonstrated access to interpreter services, had filed a protest to the original order denying his claim, and was thus familiar with the process. Mašić was represented by counsel for over half of the 60-day time period during which an appeal could have been filed. The Board did not err by finding that Mašić was not entitled to equitable relief from the 60-day requirement.

Mašić has also argued that the Department order failed to comply with the black faced type requirements of RCW 51.52.050, and thus the order did not meet the communication requirement.[3] However, Mašić did not raise this argument in his petition for review to the Board. Thus, the claim of error is waived. RCW 51.52.104; RAP 2.5(a).

IV

Due process requires that the Department give Mašić adequate notice and an opportunity to be heard, and that procedural irregularities not undermine the fundamental fairness of the proceeding. Kustura, 142 Wn. App. at 674 (citing

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[3] RCW 51.52.050 provides that a copy of a final Department decision must be sent to the worker and

> shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

Sherman v. State, 128 Wn.2d 164, 184, 905 P.2d 355 (1995)). Mašić contends that the Department violated due process requirements by failing to send him the order denying his claim to him in his native language of Bosnian.

Our determination of what process is required in a particular situation involves analysis of the following factors:

> (1) the private interest at stake in the governmental action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government interest, including the additional burdens that added procedural safeguards would entail.

Kustura, 142 Wn. App. at 674 (citing Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

Where notice is provided in English to a non-English speaker, such notice does not violate due process requirements if it would put a reasonable recipient on notice that further inquiry is required. Kustura, 142 Wn. App. 676 (quoting Nazarova v. I.N.S.,171 F.3d 478, 483 (7th Cir.1999)). In this case, the Department notice reasonably informed Mašić that he should make further inquiries concerning its contents and meaning. Mašić had filed a protest to a prior order, and thus had knowledge of the process. Shortly after the issuance of the order in question here, Mašić had obtained counsel. Mašić had previously used an interpreter, including for the filing of his claim. As in Kustura, Mašić has not shown that the procedures used by the Department caused a risk of erroneous denial of benefits.[4]

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[4] While we recognize that Kustura has not foreclosed the possibility of establishing a due process violation, we note that existing Department procedures allow workers to seek relief from appeal deadlines based on equitable considerations. See Kustura, 142 Wn. App. at 673 n.20.

Mašić also contends that the Department's and Board's denial of his request for additional interpreter services (1) violates Washington's Law Against Discrimination, chapter 49.60 RCW; (2) violates WAC 263-12-020;[5] and (3) impermissibly shifts the costs of seeking benefits onto the injured LEP worker. However, RCW 51.52.104 states that a petition for review of an IAJ decision shall "set forth in detail" the grounds for such review and failure to do so results in waiver of the issue. Because Mašić failed to raise these issues in his petition, we decline to consider them on appeal.

Mašić next cites Executive Order 13,166 as authority for his allegation that he is entitled to interpreter services both during Department claim adjudication and in all communications relative to his appeal to the Board. Mašić's reliance on Executive Order 13,166 is misplaced. That order requires federal agencies to examine the services they provide, and implement a system by which the LEP person can meaningfully access those services, without unduly burdening the agency. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (August 11, 2000). The Department and the Board have taken substantial steps, including the provision of interpreter services and assistance to claimants as noted by both parties in briefing, to comply with the order. Moreover, the order "does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person."

The existence of this potential remedy is now part of the Department's "procedures." Given the availability of this remedy as a possibility, it is difficult to envision the circumstances that would constitute a due process violation.

[5] WAC 263-12-020(1)(a) provides for injured workers' right to be represented by counsel in Board proceedings: "Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by an attorney at law or other authorized lay representative of the party's choosing as prescribed by [WAC 263-12-020(3)]."

Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (August 16, 2000). Thus, Mašić has no private right of action enforceable against any person on the basis of Executive Order No. 13,166.

Mašić next claims that the Department's actions discriminated against him based on his national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2004). Section 601 of Title VI prohibits recipients of federal financial assistance from discriminating based on race, color, or national origin. Alexander v. Sandoval, 532 U.S. 275, 278, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001). While there is a private right of action to enforce Section 601 of Title VI in circumstances of intentional discrimination, there is no private Title VI right of action with regard to disparate-impact claims. Alexander, 532 U.S. at 279, 293. Mašić has offered no evidence whatsoever to prove that the Department intentionally discriminated against him on the basis of his national origin. Moreover, in Kustura, we held that "the Department's procedures have not singled out these and other Bosnian workers as one particular language group and denied them benefits on that basis. As such, they did not create a suspect class based on national origin." Kustura, 142 Wn. App. at 687.[6] The facts of this case do not require a different result.

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[6] Citing State v. Marintorres, 93 Wn. App. 442, 969 P.2d 501 (1999), Mašić argues for the first time in his brief that there is no rational basis for treating LEP claimants differently from hearing-impaired claimants, who are provided free interpreter services. However, hearing-impaired claimants are distinctly different from LEP claimants. A hearing impairment is a physical disability. Being limited in English proficiency is not. Moreover, Marintorres involved interpreter costs for defendants in criminal cases. "In this state, the right of a defendant in a criminal case to have an interpreter is based upon the Sixth Amendment constitutional right to confront witnesses and 'the right inherent in a fair trial to be present at one's own trial.'" State v. Gonzales-Morales, 138 Wn.2d 374, 379, 979 P.2d 826 (1999) (quoting State v. Woo Won Choi, 55 Wn. App. 895, 901, 781 P.2d 505 (1989)). Given that the Sixth Amendment does not apply to civil actions, Mašić's reliance upon Marintorres is unavailing.

V

Mašić next contends that the "legal proceeding" before the Board includes discovery and pretrial motions, and thus free interpreter services were required during those portions of this litigation. In Kustura, we held that RCW 2.43.030 requires the Board to appoint an interpreter to assist a non-English-speaking claimant "'throughout the hearing.'" Kustura, 142 Wn. App. at 680 (quoting RCW 2.43.030). "This includes all communications during the hearing, but the statute does not include matters beyond the hearing itself, including communications with counsel outside of the hearing and other trial preparation." Kustura, 142 Wn. App. at 680 n.47. That decision is dispositive.

VI

Finally, Mašić contends the trial court erred in awarding the Department attorney fees and interest. His arguments are indistinguishable from those we rejected in Ferenćak. The superior court has discretion to award $200 in statutory attorney fees to the prevailing party under RCW 4.84.030 and RCW 4.84.080. Ferenćak, 142 Wn. App. at 730. Accordingly, the trial court may impose interest pursuant to RCW 4.56.110.

FOR THE COURT:

Dwyer, A.C.J.

Cox, J.

Leach, J.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

DIVISION I
One Union Square
600 University Street
(206) 464-7750
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May 22, 2008

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Seattle, WA, 98144-5014

CASE #: 60139-3-I
Ferid Masic, Appellant v. Department of Labor & Industries, Respondent

Counsel:

Enclosed please find a copy of the order entered by this court in the above case today.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

LLW

enclosure

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FERID MAŠIĆ, Appellant, v. DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	DIVISION ONE No. 60139-3-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Ferid Mašić, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 22nd day of May, 2008.

FOR THE COURT:

Judge

Department of Labor and Industries
315 5 th Avenue South, ST. 200
Seattle, Wa 98104

From: Ferid Masic
3434 So. 144 St # 133
Tukwila, Wa 98168

Claim # Y900479

To:Alicia Squibb and Ted Carlson
Fax:206 515 2812

Dear Alicia,
I am authorizing Ruslan Tumbic,interpreter for Bosnian language,to exchange information about my injury,treatment and/or any other information regarding a status of my claim.I do apologize for not being able to contact Mr.Carlson in a timely manner reason being my non- fluency in english language.I presently have pain in left arm and leg (where surgery was performed) and would like to continue treatment and therapy.
Asking you to take this in consideration,I am sending my

Regarts

Ferid Masic
Ferid Masic

P.S. Mr. Tumbic ,pager number is 206 540 8944

APPENDIX C

Board of Industrial Insurance Appeals
In re: Masic
Docket No.. 04 25602
Exhibit No.. 2
ADM X 10/25/05 Date REJ ☐

EXH 9

VDR OVERLAKE HOSPITAL MEDICAL CTR
1035 116TH AVE NE
BELLEVUE WA 98004-4604

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
OLYMPIA, WA. 98504

P

CLAIM ID : Y900479 TYPE : RJ
MAILING DATE : 04-13-04 WRKPOS : PM75
INJURY DATE : 06-29-03 UNIT : E
SERVICE LOCATION : SEATTLE
ACCOUNT ID : 0-00
CLASS : 0000

MT FERID MASIC
3434 S 144TH ST APT 133
SEATTLE WA 98168

NOTICE OF DECISION

YOUR LEGAL RIGHTS IF YOU DISAGREE WITH THIS ORDER:
THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING. YOU CAN EITHER FILE A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA 98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER. IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE APPEALS, PO BOX 42401, OLYMPIA, WA 98504-2401.

THIS CLAIM FOR BENEFITS IS HEREBY REJECTED FOR THE FOLLOWING REASON(S):

THE DEPARTMENT IS UNABLE TO SUBSTANTIATE AN EMPLOYER-EMPLOYEE RELATIONSHIP AT THE TIME OF YOUR ALLEGED INJURY.

ANY AND ALL BILLS FOR SERVICES OR TREATMENT CONCERNING THIS CLAIM ARE REJECTED, EXCEPT THOSE AUTHORIZED BY THE DEPARTMENT FOR DIAGNOSIS.

SUPERVISOR OF INDUSTRIAL INSURANCE

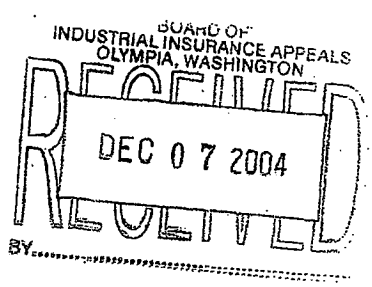
BY BELVA L SHOOK

POLICY MANAGER

CLAIMANT COPY

APPENDIX D

EXHIBIT A



DEPARTMENT OF LABOR AND INDUSTRIES
P.O.BOX 44291
OLYMPIA,WA,98504-4291

FERID MASIC
3434 S.144TH ST # 133
SEATTLE,WA 98168

CLAIM ID: Y900479

TO WHOM THIS MAY CONCERN.

I received your decesion,mailed on 04-13-2004 and I would like you to reconsider it.

I worked with "SEATTLE CONCRETE DISING" (Owner Muhamed Hadzimuratovic ,License # SEATTCD982K2)in 2003. I gave him my social security number on his request .I earned $ 3000.00,with him not witholding my taxes.
He told me that my benefits will start after six months.(I started in February 2003) with all this I considered myself as an employee of this employer.
I did not have an access to his records to see if he reported me to the department of labor and industries on 03-15-2004.
I filed my tax return,where with my other job I reported my income from "Seattle Concrete Desing"(see attached).
Because of my injury I had to undergo big surgery,extensive treatment I suffered a finacial loss.
Again,I dont know (and Didnt know) any administrative relationships,employer-amployee relationship and since I was a worker in that company I think(and thougt) that I have all rights as his other employees.
Therefore I am asking you to take your decesion in recosideration and Open my claim.

THANK YOU

MAY, 08-2004

FERID MASIC

APPENDIX E

Board of Industrial Insurance Appeals
In re: Masic
Docket No.: 04 25602
Exhibit No.: 4
ADM. 10/25/05 Date REJ.

EXH

RVDR OVERLAKE HOSPITAL MEDICAL CTR
1035 116TH AVE NE
BELLEVUE WA 98004-4604

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
OLYMPIA, WA. 98504

MP

CLAIM ID : Y900479 TYPE : RE
MAILING DATE : 09-28-04 WRKPOS : PM75
INJURY DATE : 06-29-03 UNIT : E
SERVICE LOCATION : SEATTLE
ACCOUNT ID : 0-00
CLASS : 0000

LMT FERID MASIC
3434 S 144TH ST APT 133
SEATTLE WA 98168

NOTICE OF DECISION

| ANY APPEAL FROM THIS ORDER MUST BE MADE TO THE BOARD OF INDUSTRIAL INSURANCE APPEALS, P.O. BOX 42401, OLYMPIA WA 98504-2401 WITHIN 60 DAYS AFTER YOU RECEIVE THIS NOTICE, OR THE SAME SHALL BECOME FINAL. |

THE DEPARTMENT OF LABOR AND INDUSTRIES HAS RECONSIDERED THE ORDER OF 04-13-04.
THE DEPARTMENT HAS DETERMINED THE ORDER IS CORRECT AND IT IS AFFIRMED.

SUPERVISOR OF INDUSTRIAL INSURANCE

BY BELVA L SHOOK

ACCOUNT MANAGER

CLAIMANT COPY

BOARD OF INDUSTRIAL INSURANCE APPEALS
OLYMPIA, WASHINGTON
RECEIVED
DEC 07 2004
BY

APPENDIX F

EXHIBIT B

MH

ANN PEARL OWEN, P.S.

ATTORNEY AT LAW

ORIGINAL
FOR BIIA FILE

August 23, 2005

Faxed this date

The Honorable Mitchell Harada
Board of Industrial Insurance Appeals
83 South King Street
Seattle, WA 98104

RE: Injured Worker: Ferid Mašić Claim Number: Y900479
Date of Injury: 6/29/03 Docket No: 04 25602
Injured Worker's Motion on Selection of Interpreter for Hearings
Injured Worker's Motion for Award of Interpreter Expenses for Correction of his Discovery Deposition

Dear Judge Harada;

Motion on Selection of Interpreter for Hearings

This letter constitutes Injured Worker Ferid Mašic's request that the Board not engage the services of the same interpreter who interpreted at his deposition. Mr. Mašić requests that the Board hire another interpreter for his hearing who is able to interpret for him accurately, word for word, and refrain from interpreting by summary of the interpreter's understanding and without inserting editorial comments without permission from the Judge.

Mr. Mašić feels confident in the interpreter services of Mr. Ruslan Tumbic who has interpreted between English and Bosnian/Serbo-Croatian at the Board before on several occasions. He was hired by the Board for interpreting at the Mediation Conference held by IAJ Canorro. Additionally, he has interpreted for several hearings held at the Board by IAJ Crossland. We urge you to confer with IAJ Crossland regarding Mr. Tumbic's performance at the task of interpreting at the Board.

This motion is based on the experience of Mr. Mašić in making the corrections to his recent discovery deposition. During the discovery deposition problems in interpretation arose. These are demonstrated in **Exhibit A** attached hereto, a true and accurate copy of the corrections to the deposition of Mr. Mašić. These corrections demonstrate repeated need for corrections because of the manner in which his testimony was interpreted. Attached hereto as **Exhibit B** is an excerpt from Mr. Mašić's deposition showing the fact

APPENDIX G

that the problem of not providing word for word interpretation was recognized during the deposition, mentioned, but continued during the remainder of the deposition.

Should you desire a full copy of the discovery deposition to assess the extent of the interpreter difficulties in the deposition to compare the questions with the answer, etc., this office will provide that full copy either electronically or on paper in either condensed or full form as you designate.

Motion for Award of Interpreter Expenses for Correction of Discovery Deposition

Mr. Mašić moves the Board for an order awarding him his interpreter expenses incurred to correct the transcript of his discovery deposition which was taken and ordered by the Department of Labor & Industries.

Mr. Mašić incurred significant interpreter expenses for reviewing for accuracy the transcript of his discovery deposition noted and taken by the Department's lawyer. The necessity for reviewing for accuracy arose during the deposition, see **Exhibit B**. Mr. Mašić's counsel requested that the Department be responsible for interpreter services to make corrections to the transcript. No objection was made at that time. Later the Department refused to cover these expenses. See **Exhibit C**, the AAG's letter so stating. Significant expenses for correcting the deposition transcript were incurred. See page 12 of **Exhibit A**. These expenses should be awarded to Mr. Mašic against the Department. Mr. Mašić is not requesting an assessment of expenses for his cost to receive a copy of his deposition, mail it to him and the interpreter, to transmit his corrections to the court reporter or for the attorney time incurred.

Authority Relied Upon

Regarding his right to interpreter services at hearing, Mr. Mašić relies upon WAC 263-12-097, asserting that this right to interpreter services at hearing encompasses the right to the services of an interpreter who will provide exact interpretations of what is spoken rather than a summary interjected with comments from the interpreter. Mr. Mašić recognizes that he cannot select the interpreter hired by the Board, but believes it is not inappropriate for him to bring to the Board's attention the difficulties had by particular interpreters that become known to him. He also feels that it is both fair and appropriate that the Board consider engaging the services of Mr. Tumbic because he has previously served without difficulties as an interpreter at the Board and there are Industrial Appeals Judges who have expressed their approval and recommendation for his services at the Board to other Industrial Appeals Judges.

Mr. Mašić also relies in both his motions on previously filed briefing on his right to intepreter services under the Washington State Constitution, RCW 2.42, RCW 2.43, and RCW Title 51 so that he is treated in like fashion to injured workers who are English speaking in the same circumstances. The imposition of interpreter expenses for making the corrections to his deposition treats him differently and imposes on him significant expenses devaluing his benefits under the Industrial Insurance Act contrary to the

underlying and over-arching purpose the Act to protect him and his family against the medical and financial problems arising from industrial injury.

Respectfully submitted and requested this 23rd of August, 2005,

Ann Pearl Owen, WSBA# 9033
Attorney for Ferid Mašić, Injured Worker
Encl: **Exhibits A – C**
Cc w/o encl via fax to Andy Simons, AAG for DLI & Hecker Wakefield, for SCD
Cc w/ encl via ABC to Andy Simons, AAG for DLI & Hecker Wakefield, for SCD

Corrections to Deposition of Ferid Mašić with
Verification of Corrections Under Penalty of Perjury and Declaration of Interpreter
BIIA Docket No. 04 25602 Claim No. Y-900479

Page/Line	Transcript Error	Why Error	What Should Appear
5/13	"Amna, he"	Wrong gender in transcript	"Amna, she"
5/13	"Adna, he"	Wrong gender in transcript	"Adna, she"
9/15	"That is what he took."	Wrong pronoun	"That is what I took."
9/22	"No, I did not."	Translation error, interpreter was summarizing not interpreting word for word.	"I only took the ESL/Property Maintenance course."
11/13-15	"There was another, and she – because he did not say the name – but he indicated she. . ."	Interpreter's commentary and truncated response	"There were two teachers. The one teaching ESL was a woman. I don't remember her name. The other, Amando, taught the practical part."
14/8-9	"He answered, white. I said What kind of papers were those? And he answered, White."	Interpreter's explanation listed as my testimony. I only said "white." The rest of the comments should be attributed to the interpreter as her explanation, not my testimony.	"White."
15/16	"I said while you were in school."	Interpreter's explanation not my testimony.	These words should be attributed to the interpreter.
18/1-2	"But they just wanted to see how much of English did we get."	Interpreter error, "how much" should be replaced with "what kind."	"But they just wanted to see how much English we understood.
18/11	"I know that what they gave us."	Interpreter error. "that" should be omitted.	" I know what they gave us."
18/12	"made for"	Interpreter error.	"made in"
19/6-7	"He said he did not understand. Who is begging me to answer? I said, Ms. Owen	Interpreter comments attributed to me. My answer was omitted. I did not say all of what appears as my answer. My response is omitted. The statement "I said Ms. Owen	"I do not understand." "I do not remember how many tests. I cannot answer the

EXHIBIT A 1

	did."	did" should be attributed to the interpreter.	question if I don't know the answer." "Who is telling me to answer?"
20/4-8	"They had a book to prepare for the exams, a book was the A, B, C. When they were doing the exams, what they gave them, they gave them pictures with multiple choice A, B, C. So, looking at the book, he would basically select which answer was appropriate for that picture."	Interpretation error. Interpreter gave a summary explanation of her understanding and not a literal interpretation of the words spoken by me.	"Highline Community College had already prepared test books. When we were tested, the exam books had multiple-choice answers. We were to choose the answer that matched the picture."
21/2	". . . I work eventually. . ."	Interpretation error, verb tense/form incorrectly interpreted	". . .I would work eventually. . . "
22/1	"an"	Misspelling/Typographical error	"am"
24/1	"Yeah,"	Misspelling	"Yes."
29/24	"No, I don't know Jovi."	Misunderstanding based on mispronunciation of the name. I heard the name about which I was asked as either Đovi or Džovi both of which are pronounced with the "j" sound like in the word "joy." The name Jović is pronounced Yovich. The J is pronounced the same as the "y" in the word "yolk." If I had been asked the names of the three Zorans I know in the US, I would have included the name Zoran Jović.	If the name had been pronounced with the j like a y like we do in Bosnian I would have answered differently. Then I would have answered "Yes, I know a Zoran Jović [pronounced Yovich] in the United States."
31/17	"He was asking Can you tell him whose address this is?"	Interpreter comment and parenthetical explanation missing.	The words "He was asking" should be attributed to the interpreter. Parenthetical

			explanation: I was pointing to the address on 2003 tax return, Schedule C. I answered by asking a question as the address I was being asked about was that of Hadzimuratović and not mine.
32/24 to 33/4	"Me and my wife, what I do, I usually whatever I get the money there is a tax taken, I report that. My wife and I, my wife knows English better than I do. We went to fill out these, and we gave them the information for that year. And they filled out the form."	Interpreter error. Interpreter failed to provide word for word accurate translation, giving only a summary of her general understanding omitting some of what was said. . Se omitted words I said from her interpretation, the answer typed in does not include my full spoken answer at the time of the deposition. The answer listed for me makes no sense, I would need to listen to my words to recall exactly what I said. However my best recollection is that what was interpreted did not include all I said. I have included what I believe my answer was as the answer here.	"My wife and I, every year, take our W-2 forms to a service to prepare our tax return. Because my wife can speak better English than I can, she talks to the person preparing the return. We went to the Wal-Mart in Renton to have the return prepared. My wife told the man that I also earned $3,000 that year but we had not received a W-2 form. The man asked who was the employer and I gave the man the Seattle Concrete Design business card. When the man finished talking to us, he gave us some forms to sign so he could file the

			returns later electronically."
34/14-15	"I went with my wife to do the taxes. Because she understands it. She speaks English."	Interpreter error.	"I went with my wife to have my taxes prepared. She understands English better than I do."
36/8-17	"We went there and took whatever forms. You know those. I said, Please say which forms. And he said W-2 forms. They took that to the company. We gave the man who was working there, we gave him the information. My wife also said I made another $3,000 working for somebody else and that somebody else did not send me the W-2 form. The man asked me which company, and I gave him the business card of Seattle Concrete Design. That's what I said that this is whom I worked for."	Interpreter error, confusing use of pronouns. The interpreter's commentary is listed as my answer. Meaning is muddled by transcript as it appears and does not include what I said accurately.	"We went to Wal-Mart and took the forms we received." The following should be attributed to the interpreter: "I said, Please say which forms." The following should appear as said by the interpreter but does not: "And he said." I said" W-2 forms." Then I said: "We took those to the company. We gave the man who was working there our W-2's. In addition, my wife said I made $3,000 but I didn't receive a W-2 form. The man asked my wife which company, and I gave him the business car of Seattle Concrete Design. And my

			wife said this is who I worked for."
38/14-16	"I didn't get that form in the hospital where I had surgery when I was injured. And that's where I got the form. I did get the form."	Interpreter error	"I didn't get that form from the hospital where I had surgery when I was injured. But later I got the form from the hospital."
40/3-4	I know him as the majority of Bosnian people – he said, Bosnian men – know him.	Interpreter error and interpreter comment included as my answer	"I know him as the majority of Bosnian people know him."
41/6-8	"No, he came by as I was taking - - move his truck, and he came by, and then he said that he was going to go and see that job at that house."	Interpreter misunderstanding or providing a summary of her understanding rather than a word for word interpretation of my answer	"Enver was already waiting by the truck when I arrived. Enver said Muha wanted Enver to observe the work to see if Enver would be interested in this type of work in the future."
41/20	". . . so he said. . ."	Interpreter's comment attributed to me.	Omit because I didn't say this.
42/12-13	"When I say we, that is two days before my injury. Muha and him, two days before his injury."	Interpreter error or confusion.	"Two days before my injury, Muha and I were working on this project."
42/16-21	On Sunday before the injury occurred, Muha called him and said, Go to prepare whatever has to be done with that patio, because the day I	Interpreter error or confusion. Interpreter's comment attributed to me as part of my answer.	"We did not work together on the day of the injury. On the Saturday before the injury, Muha called me on the phone to tell me to finish the work in order

	guess when they are supposed to work they had to – concrete had to be poured so the whole place had to be ready for pouring of concrete that's how I understand it."		to prepare the patio for pouring the concrete. Muha told me that he, Muha, had already ordered the concrete to be poured on Monday." I did not say "That's how I understand it." This should be attributed to the interpreter.
43/8-12	"When he called me he gave me the money to buy iron at Home Depot. I did buy the iron, and I took it to - - already at that patio they had some machines and tools, because they had been working on that patio for several days."	Interpreter error or confusion	"After Muha called me, I went to Muha's to get money to buy rebar at Home Depot. On Sunday morning I bought the rebar and took it to the job site. Muha told me the night before that at the patio, Seattle Concrete Design had the machines and tools there because Seattle Concrete Design had been working on the patio for several days."
43/25	"When I hurt myself, when I hurt myself"	Interpreter error	"When I was injured, when I was injured"
44/12	"When I hurt myself"	Interpreter error	"When I was injured"
44/21-25	"I don't know. I saw the woman coming out. And I don't know, she saw something,	Answer appears wrong in transcript. Interpreter error, interpreter comments attributed to me.	"I don't know her name. I saw a woman coming out. And when she saw me

	and then she – he did not say she went back and got the tablecloth or something out. But I don't remember anything, and I don't - - I have never seen that woman before."		bleeding, she went back and got a tablecloth or something. But I don't remember anything after that. I have never seen that woman before."
47/10-15	". . . or I work on them when they are there. So I basically set and answered the letter. And that's probably why he said he answered within 60 days, What he is saying, whether it is 60 days or not, I am not sure but when I got the letter I responded."	Interpreter comment and confusion from mixing of pronouns	Omit "or" Add "." To end the prior sentence. Should be attributed to the interpreter "And that's probably why he said he answered within 60 days, what he is saying," My Answer should be: "I work on the directly. I sat down and answered the letter. Whether it was 60 days or not, I am not sure, but when I got the letter, I responded."
50/12	". . . a cash."	Error in interpretation	". . . a check."
51/13	"Yeah"	Misspelling	"Yes"
52/3	"Ibrahim Besirević"	Omitted additional name	"Ibrahim Besirević and Edin Djuderija."
54/4	"He said he was kicked out."	Interpreter's confusing use of pronouns.	"Patrick was fired."
54/23-25, 54/1	"What he said is that I was helping the supervisor with some small jobs. And they	Interpreter error and commentary.	The manager and supervisor at Equity met and decided to allow me to continue at

	basically brought me back so that I could keep job and support myself because I did not have any money."		the company doing lighter jobs so I could at least be employed and have some income."
55/18-19	". . . but I don't know who the manager was."	Interpreter omission	". . . but I don't know who the property manager was."
56/11	". . . he showed up. . ."	Error in interpretation	". . . and he was present to provide interpreter services."
56/23 57/4 58/11	"Roslyn"	Misspelling	"Ruslan"
59/23	"Yeah. . ."	Misspelling	"Yes"
60/8-10	There is a saw that you use for wood, but it's mounted on something -- brasil (Phonetic) -- which I don's know what it is."	Interpreter's error and comment attributed to answer.	"It was a saw blade that you use for wood, but it was mounted on a basilica [grinder] used for metal cutting."
60/15	"Yes, it was a circular."	Omission in interpretation	"Yes, it was a circular blade."
60/19	". . . if. . ."	Misspelling	". . . of. . ."
60/20-24	Remaining response	Error in interpretation	"I called Muhamed Hadzimuratović and told Muha that I could not cut the siding down to the level where the concrete was to be poured because Muha did not have the necessary tool at the job site. Muha said he

			would call Dule and Dule would bring the tool. About an hour later Dule brought the saw owned by Seattle Concrete Design from the job where Dule was working for Muha."
61/3-4	"But it was on another job site."	Interpreter truncated response	"Because Muha and I used it on another job site."
62/10-14	'What he is saying is that he got paid for the work that he had done for Drago directly from Drago. What kind of arrangement Drago had with Hadzimuratović he does not know because Drago paid also not him but to other people."	Interpreter's comment listed as the witness's answer and pronoun confusion.	"I got paid for the work I had done for Seattle Concrete Design directly from Drago. What kind of arrangement Drago had with Hadzimuratović, I do not know because Drago also paid the other two workers from Seattle Concrete Design.'
64/4-5	"If Drago was to testify that he was working for him, that is not the truth."	Interpreter's confusion with pronouns.	"If Drago were to testify that I was working for him, that is not the truth."
64/20 65/6 65/11 65/13 66/6 66/20 67/8 67/13 69/24 70/14	"Signa"	Misspelling	"Cigna"
65/20	"I think there are	Interpreter truncated response and	"Cigna paid all

	no costs."	gave a summary of her understanding rather than interpreting the actual words spoken.	the costs at the time except for the deductible."
68/21	"remodled"	Misspelling	"remodeled"
71/22-25	"I did not say that he came to my house. What I said that he showed up in the place that is in between the complex of buildings, so in between there, that morning when I was going to pick up the truck from Hadzimuratović, Hadzimuratović's truck, because I was going to work."	Interpreter's confusing use of pronouns and comment attributed to me as part of my answer.	"I did not say Enver came to my house. What I said was that Enver showed up in the lot that is in the middle of the apartment complex, where both Muha and I lived at the time, that morning when I picked up the truck from Hadzimuratović, Hadzimuratović's truck, because I was going to work."
72/5-8	"What he was told is that when Enver came, Enver told him that Muha - - which is Hadzimuratović - - told him to take him, to take Enver to the job so that he can see what is being done."	Interpreter confusing use of pronouns and added commentary	"What I was told by Enver was that Muha wanted me to take Enver to the job site so Enver could see what was being done."
73/9-13	"What he said was that he came there to see what he was doing and how he was setting whatever, this iron or whatever else."	Error in interpretation, pronoun confusion	"Enver came to see what I was doing and how I was setting the rebar and the 2 x 4's."
73/14-17	"The way I	Interpreter's comment listed as my	"Enver was not

	understand it, he is saying that he came to look at the job, how it's being done, that in case -- his explanation – that in the future he does that he knows how to do it."	answer, interpreter pronoun confusion, interpreter truncation of answer by providing a summary rather than a word for word interpretation.	supervising because Enver was not working but was observing and learning. Enver came to look at the job, how it was being done so that in the future Enver knows how to do it either for Seattle Concrete Design or if Enver should start his own business."
75/23-25 76/1-3	"He was with the wheelbarrow. He was bringing the stones, and whatever, as you would put into the pathway prior to putting the steel beams, or whatever and prior to putting. And he said two different kinds. And don't ask me what. Probably larger stones, and then smaller ones that you fill this with."	Interpreter confusion, truncation of response, and lack of familiarity with construction terminology.	"Before I put down the rebar, Dule was leveling the ground and putting in stones to make the form prior to the concrete being poured. Dule used a wheelbarrow to put two different kinds of stones, larger on the outside and small stones to fill in with."
76/18-21	"When I first started working I told him to buy him a machine, to buy a machine for siding cutting, because he did not have. But he didn't, he didn't, and then this is	Interpreter truncated the response	"The grinder for cutting metal had the metal cutting blade removed and replaced with a circular saw blade for cutting wood. This 'improvised' tool was given to me

	what happened."		to cut siding before the concrete would be poured. I told Muha when I first started working for Seattle Concrete Design to buy a proper saw for cutting siding. But he didn't. He said he would buy it later. Then I was injured using Seattle Concrete Design's 'improvised' tool."

Verification of Corrections Under Penalty of Perjury:

I hereby certify under penalty of perjury of the laws of Washington that I am the deponent Ferid Mašić, that I have had interpreted for me the deposition transcript from English into my language Bosnian/Serbo-Croatian and I have provided the above changes through the interpreter to my lawyer who has put them in this form which has been interpreted to me by the interpreter back into Bosnian. The above corrections are true. Signed at Seattle, Washington this 22nd of August, 2005 under penalty of perjury,

Ferid Masic

Ferid Mašić, Deponent and Injured Worker

Declaration of Interpreter

I hereby certify under penalty of perjury of the laws of the state of Washington that I interpreted the deposition of Ferid Mašić to him from English to Bosnian/Serbo Croatian, that he provided me his corrections in Bosnian/Serbo Croatian which I interpreted into English for the lawyer and that I interpreted the foregoing corrections for Mr. Mašić from English back into Bosnian and that I also interpreted the above Verification of Corrections Under Penalty of Perjury from English to Bosnian/Serbo Croatian before he signed the same. My charges for these interpreter services are: $480.00 Signed at Seattle, Washington this 22nd of August, 2005 under penalty of perjury,

Ruslan Tumbic, Interpreter

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

IN RE: FERID MASIC) DOCKET NO. 04 25602
)
CLAIM NO. Y-900479)

DEPOSITION UPON ORAL EXAMINATION OF

FERID MASIC

APPEARANCES:

For the Department: ANDY SIMONS
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Seattle, WA 98164

For the Employer: STEPHAN WAKEFIELD
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For the Claimant: ANN PEARL OWEN
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2407 - 14th Avenue South
Seattle, WA 98144

Also Present: VERA BRANKOVAN
World Language Interpreters
P.O. Box 1716
Milton, WA 98354

EXHIBIT B

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MS. OWEN: Object to the form of the question. That tax return was filed electronically by H&R Block. The client didn't actually file it himself.
Q (By Mr. Simons) With that clarification, do you remember filing this tax return?
MS. OWEN: Can you let him see what you are asking about.
Q (By Mr. Simons) (Counseling Handing to Witness). Do you recognize that?
A This is the taxes that I reported.
Q On the tax return, you stated that, in Schedule C, that you were the sole owner of Seattle Concrete Design, correct?
MS. OWEN: Object to the form of the question. You will not find Mr. Masic's - -
MR. SIMONS: Objection; counseling is testifying.
MS. OWEN: He didn't state that.
MR. SIMONS: Ms. Owen, you are - -
MS. OWEN: You are asking something else, and you are asking leading questions which are unfair to anyone in English much less in translation.
I am only trying to protect my client's rights by objecting to the form of the question.
MR. SIMONS: Ms. Owen, at this point you have coached your client a number of times. You have coached

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him in this question.
MS. OWEN: I haven't coached him.
MR. SIMONS: Let me finish.
MS. OWEN: It says proprietor. It wasn't prepared by him, Counsel, you know that. You are just trying to cheat the fellow.
MR. SIMONS: Ms. Owen has just thrown the exhibit at me.
MS. OWEN: It doesn't say the word sole, which you said Sole, s-o-l-e, on there anywhere.
MR. SIMONS: Ms. Translator, can you translate the word sole for the witness, please?
A What am I proprietor of?
Q (By Mr. Simons) Do you recall, in your 2003 tax return, claiming to be the owner, the sole proprietor of Seattle Concrete Design?
A He was asking, Can you tell him whose address is this?
Q Once again, I ask the questions, not you, Mr. Masic. Do you recall claiming to be the sole proprietor of Seattle Concrete Design in your 2003 tax return?
MS. OWEN: Objection; he has never made that claim.
Q (By Mr. Simons) You can answer the question.
A I am not the proprietor of Seattle Design. I only reported that I did work for Seattle Concrete Design.

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Q Do you recall filling out the Schedule SE in this tax return that says self-employment tax?
MS. OWEN: Objection; it's clearly not - - it's clearly filled out by a computer.
MR. WAKEFIELD: How is that clear? And you are testifying yourself.
MS. OWEN: You are not being fair to a guy. He is here to answer your questions. Ask him if he was the proprietor. Ask him how this tax return came to say that. Ask him if he could speak English with the person who prepared it. Ask him if he ever saw it before it was filed.
MR. SIMONS: Ms. Owen, you are obstructing the deposition.
MS. OWEN: I am not obstructing it. I am suggesting useful questions so you can find out what you really need to know. This isn't a perpetuation deposition.
MR. SIMONS: Ms. Owen, you were wasting my deposition.
MS. OWEN: Waste it yourself.
Q (By Mr. Simons) Do you recall making a claim of self-employment tax for your 2003 tax return?
A Me and my wife, what I do, I usually whenever I get the money there is a tax taken, I report that. My wife and

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I, my wife knows English better than I do. We went to fill out these, and we gave them the information and the only thing I said is that I earned $3,000 for that year. And they filled out the forms.
MS. OWEN: Just a minute. I heard my client distinctly twice refer to W-2s, and you didn't translate that. You never mentioned that in the answer.
THE INTERPRETER: I am sorry.
MS. OWEN: So I am getting worried that we are not getting the full answer here.
THE INTERPRETER: I am sorry. He did say they took the W-2 forms, me and muy wife. He talked 15 sentences, and - -
MS. OWEN: I think you are not getting the full testimony. So we need to go sentence by sentence instead of summary.
So if you could give us the answer sentence by sentence, and she can interpret it so that the full answer appears in the record. I don't want to stop Mr. Simon's ability to ask questions, but I want my client's full answer on the record.
THE INTERPRETER: I apologize.
Q (By Mr. Simons) Mr. Masic, you went to H&R Block to have your 2003 - -
MS. OWEN: Counsel, I am going to insist at this

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point that his full answer be allowed to be put into the record, since it's not yet there, because the full meaning of what he has said hasn't been conveyed.
MR. SIMONS: Are you able to put his full answer on the record?
THE INTERPRETER: Except for the W-2s - -
MS. OWEN: I would ask my client say the answer again sentence by sentence and interpreted sentence by sentence so that we know that the full thing has - - I don't know if this has occurred before now, but this time I could recognize it.
THE INTERPRETER: One by one, I said.
MS. OWEN: Okay.
A I went with my wife to do the taxes. Because she understands it. She speaks English.
Q (By Mr. Simons) Where did you go, what company?
MS. OWEN: You are now asking another question. We were trying to get the former question in.
MR. SIMONS: Ms. Owen, this is my deposition.
MS. OWEN: I am going to put on the record that we have now agreed that we were going to put the answer in sentence at by sentence that was previously said but not interpreted and put in the full answer, but now you are reneging on that.
MR. WAKEFIELD: Why don't you just let the record

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reflect what happened, and go on?
MS. OWEN: Because my client said more than is there, and it's not fair to cut him off.
MR. WAKEFIELD: That is because you can't hear when you are eating that apple so loud.
MS. OWEN: It wasn't translated. He said it twice.
MR. WAKEFIELD: I find it disrespectful to be eating an apple like that in the middle of a deposition. But second of all - -
MS. OWEN: You haven't been at the Board where AGs are eating candy bars while questioning people in front of a judge.
MR. WAKEFIELD: Let's start showing some respect for everybody.
Why don't we let the record reflect what happened. I am sitting here, it sounded like he was done talking, and so Andy was just - - it may not have been everything he said before. I would have had a hard time remembering all I said before. That was his second answer. So now - -
MS. OWEN: That wasn't the full answer. She was told to go sentence by sentence.
MR. WAKEFIELD: Why don't we stop for a second and let him go through the whole answer again; is that okay

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Andy?
MR. SIMONS: That's fine.
MR. WAKEFIELD: And then everybody can be happy and we'll see what happens.
MR. SIMONS: That's great.
A I don't know what the name of the company is. I just know that I have to submit and do the taxes.
We went there and took whatever forms. You know those. I said, Please say which forms. And he said, W-2 forms. They took that to the company.
We gave the man who was working there, we gave him the information. My wife also said I made another $3,000 working for somebody else and that somebody else did not send me the W-2 form. The man asked me which company, and I gave him the business card of the Seattle Design. And that's what I said that this is whom I worked for.
Q (By Mr. Simons) Is that the complete answer? Can we begin regular questions again?
A Yes, that is what I did. That's it.
Q When you went to - - does H&R Block sound like the place that you went?
A I know that I was in Wal-Mart at Renton, at Wal-Mart in Renton.
Q Were you aware that in your 2003 tax return you claimed

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to be the sole proprietor of Seattle Concrete Design?
MS. OWEN: Object to the form of the question.
Go ahead and answer, please.
A I did not know. I had no idea, nor do I understand things about these taxes.
Q (By Mr. Simons) In 2003, you also made a claim for unemployment compensation of $4,626; do you recall what dates you were claiming unemployment for in 2003, what time period?
A I don't, no.
Q Regarding the - - do you remember back to June, June 29th, 2003?
A I always remember that.
Q On June 29th, 2003, you listed Enver Mestrovac as a witness in the case; do you remember that?
MS. OWEN: Obejction; that wasn't created that day. Is it a trick question? That's the day of the injury. The form wasn't filled out that day. So the listing you mentioned as being done on that day was done on a different day. I don't know if that's what you meant in your question.
MR. SIMONS: Ms. Owen, if I could continue? Thank you.
Q (By Mr. Simons) You filed an application for benefits with the Department in March of 2004, correct?

808f0273-5d5f-4465-a6cd-841c54389528

Rob McKenna
ATTORNEY GENERAL OF WASHINGTON
Labor & Industries Division
900 Fourth Avenue • Suite 2000 • MS TB-14 • Seattle, WA 98164-1012 • (206) 464-7740

July 27, 2005

Ann Pearl Owen
Attorney at Law
2407 – 14th Ave. S.
Seattle, WA 98144

RE: Ferid Masic
Docket No. 04 25602
Claim No. Y-900479

Dear Ms. Owen,

At the conclusion of yesterday's deposition of your client, you told the court reporter that your client would not waive his right to read and examine the transcript prior to certification. You also stated you would require the interpreting services of Vera Brankovan to review the transcript with you and Mr. Masic. You also announced that my office or the Department would be paying for Ms. Brankovan's services to review the transcript with you and your client.

While it is your client's right to review the transcript with an interpreter, he will need to pay for any interpretive services he feels he needs for the task. Neither the Department nor the attorney general's office will pay for Ms. Brankovan to review the transcript with you and your client, nor pay for any other interpretive services beyond those provided at the deposition. If you wish to employ Ms. Brankovan for any interpretive services, you will need to contract with Ms. Brankovan directly.

Sincerely,

Andy Simons
Assistant Attorney General

AJS/jv
cc: Vera Brankovan
Stephan Wakefield

EXHIBIT C

900

ANN PEARL OWEN, P.S.

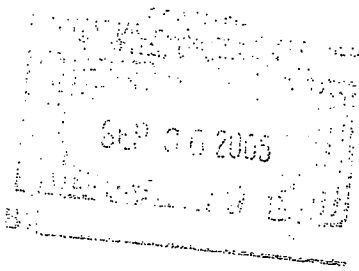
ATTORNEY AT LAW

ORIGINAL
FOR BIIA FILE

September 29, 2005

Faxed w/o enclosures and sent via ABC w/ enclosures

The Honorable Mitchell Harada
Board of Industrial Insurance Appeals
83 South King Street
Seattle, WA 98104



RE: Injured Worker: Ferid Mašić Claim Number: Y900479
Date of Injury: 6/29/03 Docket No: 04 25602
Concerns regarding Interpreter Services at Upcoming Hearings
Objection to Use of Novica Kostović as Interpreter at Hearing

Dear Judge Harada;

This office is in receipt of your letter dated September 23, 2005 with its enclosure. It is clear from that letter that rather than contacting the interpreter whom you indicated you would arrange to interpret at the upcoming hearings, someone contacted, instead, a language service to arrange his interpreter services at the upcoming hearings. Mr. Tumbic does not work through a language service. I provided you his pager number for direct contact: 549-8944.

Your letter suggests that the Board is required to hire all interpreters through this language service. This is surprising because the Board has often hired interpreters for Bosnian/Serbo-Croatian individually in the past and not through any language service. Most recently, IAJ Laura Bradley individually requested Vera Bronkovan to interpret at a hearing held on Monday, September 26, 2005 at the Seattle Board. That same day, she arranged to have Ms. Bronkovan travel to Olympia to interpret for hearing there in the same case on October 31, 2005. According to Ms. Bronkovan, her services were not arranged through a language service but were arranged directly with her privately. IAJ Bradley did this because, in the past, an interpreter provided by a language service [which one I do not know] was unable to interpret adequately in Bosnian at a Board hearing resulting in the striking of testimony and cancellation and rescheduling of the hearing on that occasion. My client is concerned that any interpreter hired by the Board be able to interpret accurately both what is spoken in English so that he can understand it and his words from Bosnian into English so you may understand his testimony precisely.

What is unclear from our September 23, 2005 letter is whether or not you are requesting an intepreter supplied by World Language Services who asserts it cannot provide a Serbo-Croatian interpreter for the hearing. My client is concerned that apparently the request made was for a Serbo-Croatian and not a Bosnian interpreter as he fears this may show or result in interpretation problems or ethnic bias.

Please be advised that my client Ferid Mašić objects to the use of one interpreter who might be supplied by World Language Services for the upcoming hearings. That person is Novica Kostović. Mr. Mašić objects to this interpreter for the following reasons:

1) **Dialect Problems with Interpretation:** Mr. Kostović is believed to be Serbian. There are dialect differences between Serbian, Croatian, and Bosnian. These dialect differences might impact interpretation at the hearing as they did at Mr. Mašić's deposition where another Serbian interpreter interpreted. Numerous problems in the interpretation occurred as previously addressed in prior correspondence. See Corrections to Mašić deposition, **Exhibit A**.

2) **Kostović Involvement in the Case:** One Zoran Jović about whom Mr. Mašić was asked in his deposition [as Zoran Jovi (whose last name was mispronounced then)] reported to Mr. Mašić that: Novica Kostović and Muhamed Hadzimuratović took Mr. Jović to the office of the Seattle Concrete Design's lawyer where counsel, Mr. Hadzimuratović, and Mr. Kostović tried to convince Mr. Jović to sign a statement, perhaps a declaration, falsely stating that Mr. Mašić was fluent in the English language and/or suggesting that the contrary proposition (that Mr. Mašić's claim not to be able to speak English fluently) was untrue. Later, Mr. Kostović called Mr. Jović in a further attempt to convince him to sign a statement/declaration to the same untrue effect. Mr. Jović reported feeling as if Mr. Kostović was trying to intimidate him into signing. Mr. Jović refused on both occasions, explaining as best he could that he would not sign because the statement/declaration was not true. This is certainly questionable activity for an interpreter and indicates a bias which should prevent Mr. Kostović serving as an interpreter in the case.

3) **Possible Ethnic Animus Problem:** Because of the presumed ethnic difference between the interpreter and Mr. Mašić, there may be the appearance of a problem with ethnic animus. This concern is based on rumors in the Bosnian community that Mr. Kostović worked in a concentration camp where there was prisoner abuse during the Bosnian war. I do not know whether there is any basis for these rumors, but know that my client does not feel comfortable having this interpreter interpret the proceedings, especially in light of what was reported to him by Mr. Jović. In any event, I am sure that you would want to avoid my client feeling the possibility of ethnic bias on the part of an interpreter at the hearing.

I am sending this letter by fax today so that this objection is communicated early to the Board so that the services of an appropriate interpreter can be arranged for the upcoming hearings. I am also notifying the Board by this letter that my client may wish to engage an interpreter to accompany him and interpret for him, including between his counsel and him, at the Board hearing because of the above concerns. Be advised that if he does this, he will request that his interpreter fees be assessed as costs pursuant to RCW 2.43.

Respectfully submitted this 29th of September, 2005,

Ann Pearl Owen, WSBA # 9033, Attorney for Ferid Mašić, Injured Worker
Cc w/ enclosure by ABC to AAG & SCD Counsel

RCW 51.52.050 Service of departmental action — Demand for repayment — Reconsideration or appeal.

Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. **The copy**, in case the same is a final order, decision, or award, **shall bear** on the same side of the same page on which is found the amount of the award, **a statement, set in black faced type** of at least ten point body or size, **that such final order**, decision, or award **shall become final within sixty days from the date the order is communicated to the parties unless** a written request for reconsideration is filed with the department of labor and industries, Olympia, or **an appeal is filed with the board of industrial insurance appeals**, Olympia: PROVIDED, That a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal: PROVIDED, That in an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

[Emphasis added]

APPENDIX H

RCW 51.52.060
Notice of appeal — Time — Cross-appeal — Departmental options.

(1)(a) Except as otherwise specifically provided in this section, **a worker**, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department **must**, before he or she appeals to the courts, **file with the board** and the director, by mail or personally, **within sixty days from the day on which a copy of the order**, decision, or award **was communicated to such person**, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

[Emphasis added]

Nothing in case law, statute, regulation or policy supports the claimant's contention that the Board or Department should provide interpreter services at all stages of a worker's appeal. Further, I am far from persuaded that this Board has jurisdiction to order the Department to pay the cost of interpreter's services. Mr. Ferencak did not present persuasive evidence or authority to establish entitlement to such services other than those provided.

FINDINGS OF FACT

1. On March 26, 2002, the Department received an application for benefits alleging that the claimant sustained a right leg injury on March 20, 2002, in the course of his employment with Travis Industries, Inc. On April 15, 2002, the claim for right leg injury was allowed under Claim No. Y-388825 as an industrial injury.

In Docket No. 02 23491, the claimant filed an appeal on November 15, 2002, from a Department order dated May 2, 2002, that paid time loss compensation benefits from April 12, 2002 through April 26, 2002, and set the time loss rate for the payment period at $1,396.50 per month.

On January 3, 2003, the Board issued an order granting the appeal, subject to proof of timeliness, assigning Docket No. 02 23491, and directing that further proceedings be held. The parties stipulated that the appeal was filed within sixty days after an interpreter communicated to the claimant the significance of the Department order.

In Docket No. 02 21795, the claimant filed an appeal on November 15, 2002, from a Department order dated May 6, 2002 that described the wage rate calculation method. The claimant's wage for the job of injury was based on $11.50 per hour, eight hours per day, five days per week = $2,024 per month; additional wage for the job of injury include: health care benefits...$175 per month; tips...none per month; bonuses...none per month; overtime...none per month; housing/board/fuel...none per month; worker's total gross wage is $2,199 per month; marital status eligibility on the date of this order is married with two children.

On December 12, 2002, the Board issued an order extending the time to act on the appeal for an additional ten days. On December 24, 2002, the Board issued a second order extending the time to act on the appeal for an additional ten days. On January 3, 2003, the Board issued an order granting the appeal, subject to proof of timeliness, assigning Docket No. 02 21795, and directing that further proceedings be held. The parties stipulated that the appeal was filed within sixty days after an interpreter communicated to the claimant the significance of the Department order.

In Docket No. 02 23492, the claimant filed an appeal on November 15, 2002, from a Department order dated May 14, 2002 that paid time loss compensation benefits from April 27, 2002 through May 10, 2002, and set the time loss compensation rate for the period at $1,396.50 per month.

On January 3, 2003, the Board issued an order granting the appeal, subject to proof of timeliness, assigning Docket No. 02 23492, and directing that further proceedings be held. The parties stipulated that the appeal was filed within sixty days after an interpreter communicated to the claimant the significance of the Department order.

In Docket No. 02 23698, the claimant filed an appeal on November 15, 2002, from a Department order dated May 28, 2002 that paid time loss compensation benefits from May 11, 2002 through May 24, 2002, and set the time loss compensation rate for the period at $1,396.50 per month.

On January 3, 2003, the Board issued an order granting the appeal, subject to proof of timeliness, assigning Docket No. 02 23698, and directing that further proceedings be held. The parties stipulated that the appeal was filed within sixty days after an interpreter communicated to the claimant the significance of the Department order.

In Docket No. 02 22295, the claimant filed an appeal on November 25, 2002, from a Department order dated November 18, 2002 that provide a partial payment of time loss compensation benefits to adjust for prior payments from May 25, 2002 through November 1, 2002, based upon varying compensation rates. The order corrected and superseded orders dated June 20, 2002, July 2, 2002, July 16, 2002, July 30, 2002, August 13, 2002, August 27, 2002, September 10, 2002, September 24, 2002, October 8, 2002, October 22, 2002, and November 5, 2002.

On December 24, 2002, the Board issued an order extending the time to act on the appeal for an additional ten days. On January 3, 2003, the Board issued an order granting the appeal, assigning Docket No. 02 22295, and directing that further proceedings be held.

In Docket No. 02 22296, the claimant filed an appeal on November 25, 2002, from a Department order dated November 19, 2002 that paid time loss compensation benefits from November 2, 2002 through November 15, 2002 and set the time loss compensation rate for the period at $1,409.42 per month or $46.98 per day.

Federal Funds Received by Department of Labor & Industries & by Washington's Industrial Insurance Program

1997-2007

Biennium	Total Federal Funds In DLI Budget	Federal Funds in Accident Account	Federal Funds in Medical Aid Account	ESSB Reference
1997-1999	$16,706,000	$9,112,000	$1,592,000	6062 § 218
1999-2001	$16,654,000	$9,112,000	$1,592,000	5180 § 217
2001-2003	$20,956,000	$11,568,000	$2,438,000	6153 § 217
2003-2005	$24,818,000	$13,396,000	$2,960,000	5404 § 217
2005-2007	$26,806,000	$13,621,000	$3,185,000	6090 §217
Total	$105,940,000	$56,809,000	$11,767,000	

APPENDIX J